IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1566 of 2004

to

FIRST APPEALNo 1570 of 2004

with

CIVIL APPLICATIONS No 5274 to 5278 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO LTD.

Versus

SHARDABEN GANPATBHAI NAYAK

Appearance:

1. First Appeals No. 1566 to 1570 of 2004

MR PV NANAVATI for the Appellant.

MR VIBHUTI NANAVATI for the Appellant.

SERVED BY AFFIX.-(R) for Respondent No. 1

RULE SERVED for Respondent No. 2

MR MA KHARADI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 28/09/2004

ORAL JUDGEMENT

1. Heard learned Advocate, Mr. Nanavati, for the appellant and learned Advocate, Mr Kharadi, for the respondents. In the facts and circumstances of the case, by consent of parties, the appeals are finally disposed of by this judgment.

2. By these appeals under Section 173 of the Motor Vehicles Act, the insurer of the vehicle involved in the accident challenges the judgment and award passed by the Motor Accident Claims Tribunal, Panchmahals, at Godhra, in Motor Accident Claim Petitions No. 2026 to 2030 of 2000 , rendered on 31st March, 2004, in exercise of powers under Section 140 of the Motor Vehicles Act.

3. The said awards are in the nature of interim award, which are subject to the final adjudication by the Tribunal under Section 166 of the Motor Vehicles Act, as has been held by the Apex Court in the case of Oriental Insurance Company Limited v. Hansarajbhai V. Kodal, 2001(4) JT 477.

4. A reference can also be have to the decision in the case of National Insurance Company v. Swaran Singh, (2004) 3 SCC 297, where the Apex Court held that except under the situation provided for by Section 149(2)(b), the insurer would not be in a position to avoid statutory liability since it has got right against the insured under proviso to Section 49(4) of the Motor Vehicles Act. In the said judgment, the Apex Court concluded that liability of insurance company to satisfy the decree, at the first instance, and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time. The Apex Court also held that this well settled rule of law should not, ordinarily, be deviated from. It is also held that an insurer is entitled to raise defence in claim petition filed under Section 163-A or 166 of the Motor Vehicles Act in terms of Section 149 of the Act and has to 'establish' the breach of policy conditions.

5. In the premises aforesaid, in the opinion of this Court, no interference is called for, at this stage, in these appeals. The appellant may raise and establish the defence of breach of policy conditions or any other breach at the time of hearing of application under

Section 166 of the Motor Vehicles Act. However, there appears substance in the apprehension shown by the learned Advocate for the appellant that what happens if the claimants do not pursue the claim petition under Section 166 of the Motor Vehicles Act.

6. Under the circumstances, while not entertaining these appeals, a direction is given to the respondents-original claimants to file undertaking before the Tribunal within four weeks of service of this order on the claimants to the effect that the main claim petition shall not be abandoned, withdrawn or permitted to be dismissed for want of prosecution or for any other reason, if such an undertaking is not already filed before the Tribunal under such direction, if any.

7. On such undertaking being filed, the amount deposited pursuant to the awards impugned in these appeals shall be disbursed, as per the direction of the Tribunal, if not already disbursed. If it is already disbursed, then also, the respondents shall file an undertaking, as stated above, if not already filed.

8. The amount of Rs.25,000/- deposited before this Court shall be transmitted to the Tribunal forthwith.

9. If the Insurance Company has already satisfied the award before the Tribunal, the amount transmitted to the Tribunal from this Court shall be permitted to be withdrawn by the insurance company after following due procedure.

10. That portion of the amount of award which is directed to be placed in fixed deposit shall not be disbursed till the final disposal of the main claim petition. However, the claimants would be entitled to the interest earned thereon periodically. With these directions these appeas are disposed of.

11. In view of the disposal of the appeals, civil applications would not survive. Civil Applications are disposed of accordingly. Rule is discharged in each matter. Ad-interim relief is vacated.

[A. L. DAVE, J.]

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